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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/814,636	04/01/2004	Werner Thiele	88265-17341	7448

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EXAMINER

NOLAND, KENNETH W

ART UNIT PAPER NUMBER

3653

DATE MAILED: 03/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/814,636

Applicant(s)

THIELE ET AL.

Examiner

Kenneth W Noland

Art Unit

3653

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5, 6, 10, 12 and 13 is/are rejected.
- 7) ☒ Claim(s) 4, 7-9 and 11 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>03-01-05</u> . | 6) <input type="checkbox"/> Other: ____. |

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1,3,6 are rejected under 35 U.S.C. 102(*b**) as being *anticipated** by **Corley. Corley discloses a cup destacking device having a pair of gripper jaws 73,91 in figure 7 that contact the cups. Note the elastic material 79,95 encasing the jaws in column 3, lines 44-50 .

3. *

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 2,5, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Corley. To modify the elastic material of Corley for any specific type of material as silicone and to provide that the jaws are exchangeable would be obvious as material commonly used in industry and to provide for detachability or removability of structure and therefore these features are not given any patentable weight. Finally , in regard to claim 13, to provide that Corley's device would handle the articles at a given rate and at a given breakage rate, would be obvious as a mere choice of operation to so operate Corley's device at any desired rate and therefore this operation expediency is not afforded any weight.

6. **

7. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Corley in view of Odorici. To provide Corley's device for air blowers to provide for the removal of the cups would be obvious in view of the teachings of Odorici's use of the air blowers 25 to effect the removal of the cups.**.

8. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over **Corley in view of Carter et al. To provide that Corley's device would dispense any other article as wafer cones would be obvious not only as a mere choice to dispense any other desired article but Carter et al discloses the desired use of dispensing wafer cones.*.

9. Claims 4,7-9 and 11 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

10. Mc Carthy is cited disclosing in figure 3 another resilient cup grippers 40,41.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kenneth W Noland whose telephone number is (703) 308-3200. The examiner can normally be reached on Tuesday- Friday ,each week.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Donald Walsh can be reached on (703) 306-4173. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3653

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Kenneth W. Noland 3/11/05
KENNETH W. NOLAND
PRIMARY EXAMINER